IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1830 of 2006
With
CIVIL APPLICATION No. 7037 of 2006
With
CIVIL APPLICATION No. 9706 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE ORIENTAL INSURANCE COMPANY LTD. & 1 - Appellant(s)
Versus
MULAJIBHAI KOYAJIBHAI ROHIT & 3 - Defendant(s)

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Appearance :
MR KK NAIR for Appellant(s) : 1 - 2.
MR RS PANJWANI for Defendant (s) : 1
None for Defendant(s) : 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 30/08/2006
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE K.M.MEHTA)

1. The Oriental Insurance Company Ltd., Vadodara has filed this appeal under Section 173 of the Motor Vehicles Act against the judgment and award dated 7.1.2006 passed by Motor Accident Claims Tribunal (Aux.) Vadodara in MAC Petition No.1815 of 1995. The Tribunal by its impugned judgment has partly allowed the application and held that the claimants are entitled to recover the amount of Rs.2,34,800/- as compensation from all the opponents No.1, 2 and 3 jointly and severally together with proportionate costs and interest at the rate of 9% p.a..

2. The appeal was filed before this Court on 13.4.2006. By our order dated 5.7.2006, we had admitted the appeal and also passed the order regarding deposit of the entire amount in this behalf. The claimants have also filed Civil Application No.9706 of 2006 for withdrawal of 50% amount.

3. On behalf of respondent-claimants, Mr Panjwani appears. With the consent of the parties, we have taken up the appeal itself for final disposal.

4. The facts giving rise to this appeal are as

under:-

4.1 The original applicant- Mulajibhai Koyajibhai Rohit aged 55 years who is legal heir of deceased, filed the claim petition on the ground that the deceased was driving the motor vehicle on 13.12.1994 at about 1.30 AM near Boriavi village near Vadodara. At that time, deceased Jayantibhai Muljibhai was travelling in Ambassador car bearing No.GTK 9800 and was coming towards Baroda and when he reached near Boriavi village, at that time, original opponent No.1- Domarshah Trilochan Shah came with his truck No. MP 23 B/1500 with full speed rashly and negligently and dashed with the car driven by the deceased wherein the deceased along with one another occupant of the car died.

4.2 It was the case of the applicant in the application that at the time of accident the deceased was 27 years old and was working as a driver in Taxi – Ambassador car and he was earning Rs.4,000/- per month. It was also the case of the applicant that deceased Jayantilal Muljibhai was healthy and he had no disease and if he would have survived then he would have earned more income and due to death of the deceased, the applicant lost his son who was the main bread-earner of the family. In that eventuality the petition for compensation was filed.

4.3 Opponent No.3 – Oriental Insurance Co. Ltd., Baroda having its office at Divyajyot Complex, Rama

Kaka Road, Chhani at Baroda and also the same insurance company having its office at University Road, Baroda- opponent No.5 filed their written statement to the claim at Exh.38 In the said written statement, the insurance company denied contention of the applicant. It was submitted that he deceased was driving the car and was carrying in all nine passengers in the car wherein RTO permit does not permit to carry nine passengers in the car and as he was carrying more than authorized persons he could not keep control over his car. Regarding other contentions, the insurance company denied the case of the applicant.

4.4 Before the Tribunal, the applicant led certain documentary and oral evidence. Ultimately, the Tribunal by his judgment and order dated 7.1.2006 was pleased to hold that the deceased sustained injuries and died on account of rashness and negligence in driving on the part of the driver of the vehicle involved. The Tribunal further held that the applicant is entitled to recover the amount of Rs.2,34,800/- as compensation from all opponent Nos.1, 2 and 3 jointly and severally together with proportionate cost and interest at the rate of 9%p.a. from the date of the petition upto deposit or realization.

4.5 Being aggrieved and dissatisfied with the said judgment and award, the insurance company has filed the present appeal as stated above, and in view

of the consent recorded earlier, we have heard the appeal finally.

5. Mr KK Nair, learned advocate for the insurance company has assailed the order of the Tribunal. The learned counsel submitted that in spite of the fact that there was no evidence on record, the Tribunal has erred in fixing the income of the deceased at Rs.2500/- per month and thereafter awarded compensation as per the formula contained in the Act. It was further submitted that the applicant – father was a businessman and aged 55 years and, therefore, in view of the well settled principle that while applying the multiplier, the age of the deceased or of the dependent, whichever is higher, should be applied is squarely attracted in the present case and, therefore, the multiplier should not have been more than 8. It is further submitted that the Tribunal has erred in awarding Rs.20,000/- for pain, shock and suffering and Rs.15,000/- as loss of consortium.

6. On the other hand, Mr Panjwani, learned advocate for the original claimant and respondent herein has supported the reasoning of the learned Judge.

7. We have gone through the judgment and evidence on record. So far as negligence is concerned, we have gone through the evidence of Muljibhai Devjibhai Exh.49. We have also gone through

the complaint Exh.45 and panchnama Exh.46. From the evidence on record both oral and documentary, we are of the view that the accident had taken place due to absolute and sheer negligence on the part of opponent No.1- driver of the motor truck. The deceased was driving on the correct side and, therefore, no negligence can be attributed on the part of the car driver. The truck driver is solely responsible for the accident in question.

8. Our aforesaid conclusion is also supported by the fact that in this case opponent No.1, who is the driver of the motor truck involved and who happened to be the best witness of the accident, has not come forward before the Court to bring the correct picture of the accident. In absence of his evidence, an adverse inference can be drawn. While narrating the case of the applicant in para 4, we have set out how the accident took place in which it was stated that the truck driver was driving rashly and negligently and that was one of the reasons why the accident took place.

9. So in this case the maxim “res ipsa loquitor” can also be applied. So in all, that is on the ground of oral and documentary evidence, on the ground that truck driver was not examined and on the principle of res ipa loquitor, we are of the view that the truck driver was solely responsible and the driver of the Ambassador car was not at all responsible and so entire liability is rightly

fastened on the truck driver on account of negligence in this behalf.

10. As regards compensation, there is deposition of Muljibhai Devjibhai Rohit that his son deceased Jayantibhai was serving as a driver of opponent No.4 Lalshankar Pitambarsinh Thakor and was earning Rs.4,000/-p.m. towards salary at the time of his death and was aged 27 years. It is no doubt true that except the same, the applicant has not produced any other documentary evidence. However, the fact remains that the father has given oral evidence that his son was earning Rs.4,000/-p.m. and the insurance company has not effectively cross-examined the applicant. In view of the same, when the learned Judge has taken the income of the deceased at Rs.2500/-p.m. we are of the view that we cannot disturb the said finding of the learned Judge in this behalf. The same is based on cogent reasoning.

11. Once we take the income of the deceased at Rs.2500/-p.m. and when deceased died at the young age of 27 years then in view of the judgments of the Apex Court in the case of General Manager, Keralas State Road Transport Corporation vs. Susamma Thomas, (1994) 2 SCC 176 and Sarla Dixit vs. Balwant Yadav, 1996 ACJ 581 and in view of the Division Bench judgment of this Court in Gujarat State Road Transport Corporation vs. Kamlaben Valjibhai Vora, (2001) 3 GLR 2528 and also another judgment of Division Bench of this Court in Nasimbanu wd/o Sirajuddin Amruddin Kazi

vs. Ramjibhai Bachubhai Ahir, (2005) 3 GCD 2372 and another Division Bench of this Court in the case of Ushaben wd/o Jashubhai Rana vs. General Manager, ONGC in First Appeal No.287 of 1988 decided on 23.12.2005 (Coram : R.S. Garg & K.M. Mehta, JJ), we have to take future income of the deceased.

12. As far as the future income is concerned, that point is well settled and there is no iota of doubt as far as this Court is concerned, particularly when there are two judgments of the Apex Court and two judgments of the Division Bench of this Court, and in view of the same we take future income of the deceased as under :-

2500 + 5000 = 7500 % 2 = 3750.

Deducting 1/3rd amount which the deceased would have spent on himself, the amount comes to Rs.2500 p.m.(3750 – 1250 X 12) = Rs.30,000 per annum as dependency benefit.

As the deceased was 27 years old, as per the Schedule, multiplier of 17 is to be applied. Hence Rs.5,10,000/- can be awarded towards loss of future dependency. As the applicant is the father, he is entitled to 1/3rd of Rs.5,10,000 = Rs.1,70,000.

13. As regards medicine and transportation, in view of the PM note and other material, the trial Court has awarded Rs.10,000/-. We see no reason to

disturb this part of the award also.

14. As regards funeral expenses the learned Judge has awarded Rs.5,000/-. As regards pain, shock and suffering, the learned Judge has awarded Rs.20,000/- and regarding consortium the learned Judge has awarded Rs.15,000/-.

15. In all the Tribunal has awarded total compensation of Rs.2,34,800/- with interest at the rate of 9%p.a. and proportionate costs. Since we find no infirmity in the award, the appeal is dismissed. The judgment and decree of the learned Judge is confirmed.

16. We had already passed the order dated 5.7.2006 regarding investment/disbursement. As we are disposing of the appeal finally, our directions regarding investment of 50% amount shall remain as it is. When the claim petition was filed the applicant was 55 years old. Today in 2006 after 11 years he will be 66 years old. In view of the same, once the insurance company deposits the entire amount, 30% of the amount with costs and interest shall be disbursed to the applicant and the remaining 20% is to be further invested. So in all, out of total amount deposited, 70% is to be invested in fixed deposits and 30% is to be disbursed.

17. Since the appeal is dismissed, the civil applications do not survive and the same are accordingly disposed of.

DS is permitted which shall be effected by respondent No.1.

(M.S. SHAH, J.)

(K.M. MEHTA, J.)

zgs/-